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Debt Collection and Consumer Reporting During COVID-19

What You Need to Know!

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Jay Harris, Esq.

- **Jay Harris** has advised institutional property management firms for three decades on all aspects of the property management lifecycle, including collections, consumer reporting, COVID-19, and fair housing.
- As Vice President of Fair Collections & Outsourcing (FCO), a leading rental collections agency and longtime NAA member, he works with property operators across the U.S. to maximize compliance, recovery, and ease of use.
- Currently Co-Chair of the Real Estate Technology Alliance's (RETA) Collections Work Group, Jay has served as General Counsel to two publicly traded rental housing vendors and Vice President on the NMHC/NAA Joint Legislative Staff.



John W. Bowdich, Esq.

- **John W. Bowdich** has twenty-four years of experience in representing and advising companies sized from one-to-five thousand employees as outside general counsel with an emphasis in commercial and tort litigation, collections, as well as consumer law defense.
- He founded Bowdich & Associates, PLLC in 2017. Prior, John acted as the Chair of the Commercial Litigation Section at The Willis Law Group, PLLC, and Partner at Korn, Bowdich & Diaz, LLP.
- John has assisted in prosecuting over 2,500 commercial-contract-and-collection matters and defending in excess of 500 consumer-protection matters.



Property Managing Accounts Receivable During COVID

AGENDA

- 1. COVID and Managing Accounts Receivable
- 2. Consumer Complaint/Dispute Topics – How PMs Can Head Them Off
 - Future-Proofing Property Management for Litigation
- 3. Resources

1. COVID And Managing Accounts Receivable

Current State: Consumer Liquidity Shifting Compliance

- Strong Consumer Liquidity
 - \$5 T saved by HHs Q1-Q3 2020
 - Today's \$50b+ ERAP Small Part of \$3T+ Consumer Support since Q1 '20
- Credit Scores Remain Strong for Most Tenants
- Tenant Demand Has Bounced Back
- Rent Growth Returned
- Accounts Received - Rent Owed: \$80b for 11+m renters?
- Collections: Higher Balances, More Contacts, Greater Repayment

Current State: Shifting Compliance – Focus On Tenants’ Rights

- Federal: CFPB/FTC Active on Consumer Housing
 - Debt Collections - Evictions for Non-Payment Rule – Notice of CDC Moratorium (eff. May 3)
 - Letter to Larger Landlords
 - CFPB Complaint Bureau – Continued attention to renters
 - Debt Collections – FDCPA Rule Delayed (eff. Jan. ‘22)
- State/Local:
 - Laws/Ordinances impact repayment timing, what’s in a debt, payment plans
 - ERAP Funds add conditions for tenant assistance debt waiver, credit reporting

Eviction Moratoria Activities

- Eviction Moratoria
 - CDC Eviction Moratorium Scheduled to Expire: June 30
 - Several States Have Own Dates: NY (Aug. 31)
 - Courts split on invalidating or upholding CDC moratorium
 - Fannie/Freddie: MF Eviction Forbearance Set to Expire: June 30
- CFPB/FTC CDC Eviction Moratorium Notice Rule - Effective May 3
 - Rule requires attorneys (“debt collectors”) filing for eviction for non-payment of rent to include notice of CDC Eviction Moratorium – Include it
 - Also, state/local (or FHFA) disclosures of tenant protections may be required
 - E.g., Calif. SB 91
- Legal challenge to rule filed (Prop. Mngt. Connection v. CFPB)
 - While challenge is pending: provide the notice
 - When in doubt – consult with counsel

Updated PM Checklist: A/R Management Amid COVID

- Missed Payment Date – Communications to T
 - Added Notices with Traditional Notice to Quit?
 - FDCPA – FTC/CFPB FDCPA Eviction for Rent Non-Payment Notice Rule
 - State and Local May Give T Greater Rights: Calif. SB 91
 - Communicated Payment Plan Options?
 - How communicated: Wash. D.C. – posted on web site?
 - Washington state – Evidence of reasonable PP offer?
 - Offered Support to T for ERAP Funds?
 - Your Process? E.g., Va. – register with VHDA and apply on T's behalf
 - Aware of Conditions? – 20% haircut on amt owed (Calif.)? Impact on credit reporting (Va.)?
 - Slow ERAP Rollout – More to come

Updated PM Checklist: A/R Management Amid COVID

- Reply: T Engages on Payment Plan
 - Make clear accommodation's conditions, consequences of non-payment
 - Can charge off upon non-payment? Usually
 - But: does state/local ordinance extend due date for non-payment past move-out date? (e.g., Calif. counties)
 - HUD: Resources for PPs
 - Va (AOBA): ~ 60% default rate on mandatory payment plans
 - Credit reporting T's rent payment?
 - CARES Act (Sec. 4021): Report as current if PP's accommodation brings T current
- Reply: T wants ERAP support
 - Agree to take funds with conditions?
 - What involvement expected?

Updated PM Checklist: A/R Management Amid COVID

- T Ignores L's Outreach – “Ghost” Tenants
 - Document outreach
 - Ex.: Washington: “reasonable” PP offer required, in order to maintain a debt
 - Evaluate options with your counsel
 - Expected Lease End Date?
 - Eviction – Compliant File? Non-Payment Violations?
 - CDC and State Eviction Moratoria – Which Apply, If Any?

Updated PM Checklist: A/R Management Amid COVID

- T Moves Out
 - Document Amount Owed
 - Net of Security Deposit/SDA/Bond
 - Itemize Ledger Charges
 - Give Clear Notice to T of Amount Owed
 - E.g., Unit Walk (FTF, Virtual, Pix, M/O Statement) to Make T Aware of Responsibility for Damages Beyond Normal Wear & Tear
 - Charge Off Amount Owing
 - Unless Ordinance Extends T's right to repay – e.g., Calif.

Updated PM Checklist: A/R Management Amid COVID

- Placing with Agency for Collections – Docs to Have (Best Practices)
 - Signed Lease(s) for RPs
 - Itemized Ledger/SODA – Net of SDA/SD
 - T's Current Contact Info and ID – w/ SSN, DOB for accuracy
 - MI/MO Statement
 - **COVID – Hardship Claim? Payment Plan (offer)?**
- Damages? Repair Invoices. Pix.
- Utilities? Bills
- Counsel? Letter of Representation
- Disputes? Notes
- Judgement? Court award

2. Consumer Complaint/Dispute Topics: How PMs Can Prepare

Terms: Consumer Complaints, Disputes, and EODs

- Consumer Complaints in CFPB Portal
 - Consumer version of events that business responds to
 - Basis for Prioritization of CFPB Work
- Consumer Disputes under Fair Credit Reporting Act
 - Consumer may dispute with furnisher (agency, landlord furnishing information to Consumer Reporting Agency), or with CRA or reseller
 - Landlord needs to reply timely to request to reinvestigate
- Evidence of Debt (EODs) under Fair Debt Collections Practices Act
 - Consumer requests detail supporting debt placed for collection
 - Landlord may need to provide additional detail to agency to support amount

Top 8 Debtor Trends: Q2 2021

“Can’t Reach Me”

- FCC robocall Rule enables phone providers to label uncertain contacts (“Possible SPAM”)
- Authorize multi-channel contact (text, email, phone, letter) and update obligation in lease – NAA Lease
- Authorize skip-tracing in application/lease – NAA Lease

“Talk to My Attorney”

- Forward LORs to agency
- CFPB or AGs may engage first

Top 8 Debtor Trends: Q2 2021

“It Wasn’t Me”

- Provide debtor ID information with placement
 - Common Names: Largest Settlements?
 - Give your agent the SSN/ITIN and DOB info
- Retain applicant ID to rebut for subsequent dispute
 - More Frequent Fraud Indicators w/ More Online Apps
- Credit Repair Organizations - Tenant Pays to Dispute...
 - Refer them to your Agency

“I’m Not Responsible”

- Retain signed lease, modifications for **all responsible parties**
- Evidence of T’s hardship declaration, Payment Plan offers, Assistance help
- Did guarantor sign the “renewal” lease of a new unit? (e.g., Student Housing)

Top 8 Debtor Trends: Q2 2021

“Not What I Was Told”

- Amount placed for collections = amount shown debtor in FAS
- Provide clear notice of charges to debtor – e.g., move-out tour
- Itemize “forwarding balances” in ledger
- Damages Award w/ Judgment for Eviction? Careful
 - Reconcile vs. ledger before placement

“Can’t Charge Me That Under The Lease”

- Duty of Mitigation (early termination)
- Repair documentation adequate for security deposit requirements?
- Lease break fees reflect unit re-rented before lease expiration

Top 8 Debtor Trends: Q2 2021

“I Have My Rights”

- FDCPA: Consumer may ask for evidence of the debt from creditor
- FDCPA: Consumer may ask for verification of the debt from creditor
 - Client may be able to verify debt amount without access to documents

“C’mon Seriously?”

- Damage or normal wear and tear?
- Repair or upgrade?
- Prorated repairs or full cost?

3. Resources

Resources

- NAA: State/Local COVID Ordinances, NAA Lease
- Emergency Rental Assistance Program:
 - Programs State-by-State: <https://www.ncsha.org/emergency-housing-assistance/#ERA>
 - Dept. of Treasury Guidance: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program>
- Repayment Plans:
 - HUD: <https://files.hudexchange.info/resources/documents/COVID-19-Tenant-Guidance-Rent-Repayment-Plans.pdf>

Additional NAA Resources

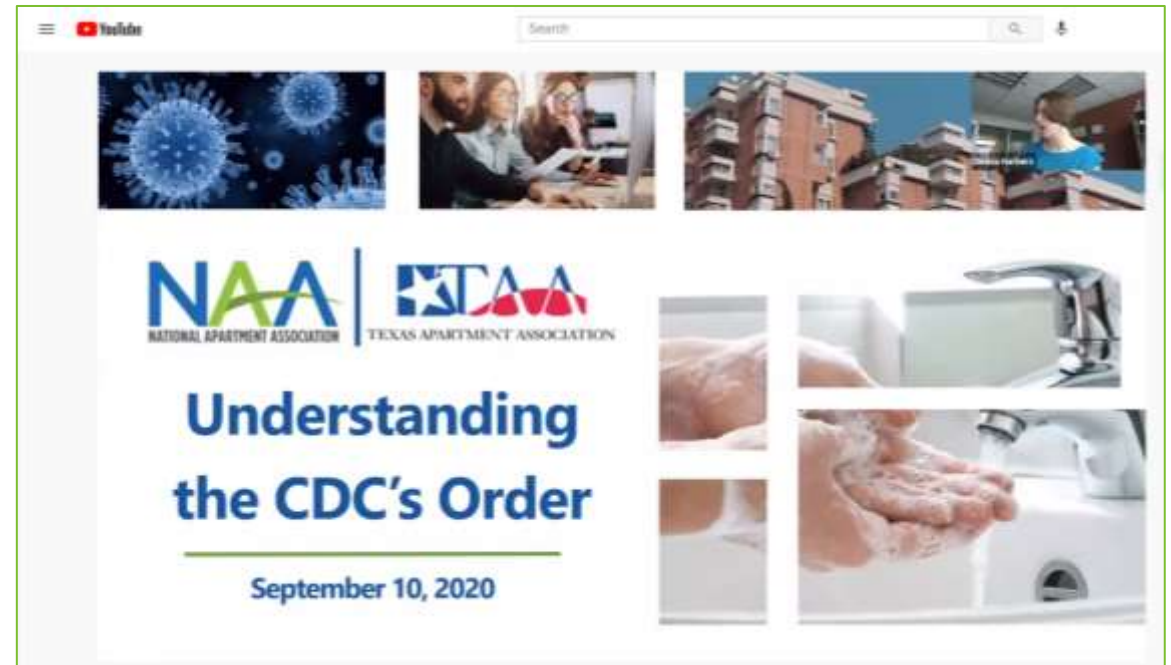
The screenshot shows the NAA website's "Coronavirus Resources and Guidance" page. The header includes a menu icon, "Member Section", the NAA logo (National Apartment Association), a phone icon with "833-86-MYNAA", and a search icon. A breadcrumb trail shows "Home > Coronavirus Resources and Guidance" and a "Help & Support" button. A "View published" button is also present. The main heading is "Coronavirus Resources and Guidance". Below this are three featured resource cards:

- Operational Best Practices**: Accompanied by an image of a person writing on a whiteboard. Description: "Guidance on how to keep safe while keeping your business running during these challenging times."
- Advocacy, Regulatory & Legal**: Accompanied by an image of a document titled "CARES Act". Description: "Information on the federal, state and local laws and regulations in response to COVID-19."
- COVID-19 Rental Housing Support Initiative**: Accompanied by a logo for the initiative, sponsored by YARD!, with logos for IAA, NAA, and NPPC. Description: "Industry organizations came together to build a series of solutions in key support areas to help our industry survive and thrive through the pandemic and beyond."

<https://www.naahq.org/coronavirus-guidance>

Additional NAA Resources (cont'd)

- White Papers:
 - Multifamily Debt Collections
- Best Practices:
 - Best Practices for Rent Collection Amid COVID-19
 - Best Practices For Property Managers: Rent Collection, Late Fees, Filings, Payment Plans
- Webinars:
 - Understanding the CDC's Eviction Moratorium



<https://www.youtube.com/watch?v=PLIALrkpPtw>



Thank you!